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CIRCUIT COURT  
FOR MULTNOMAH COUNTY

IN THE CIRCUIT COURT OF THE STATE OF OREGON

FOR THE COUNTY OF MULTNOMAH

08821

RANDY RITMILLER,  
Individually and as a Shareholder of Spirit  
Enterprises, Inc.;

Plaintiff,

vs.

MICHAEL SPICER,  
Individually and as a Shareholder of Spirit  
Enterprises, Inc.;  
AMY SPICER, Individually;  
MARY LOU SPICER, Individually;  
JUSTIN SPICER, Individually;  
ANDREW SPICER, Individually;

Defendants.

Case No.

1306-08821

COMPLAINT

Breach of Duties of Good Faith  
and Fair Dealing;  
Breach of Duty of Full Disclosure;  
Common Law Fraud;  
Conversion;  
Intentional Infliction of Emotional Distress;  
and Unjust Enrichment

ORS 60.952

JURY TRIAL REQUESTED

CLAIM NOT SUBJECT TO MANDATORY  
ARBITRATION

CLAIM AMOUNT NOT MORE  
THAN \$2,000,000

Plaintiff alleges:

JURISDICTION

1.

At all relevant times, Plaintiff, RANDY RITMILLER ("Ritmiller") is a resident of the  
County of Multnomah in the State of Oregon.

2.

At all relevant times, Defendant, MICHAEL SPICER ("M. Spicer") is a resident of  
the County of Clark, in the State of Washington.

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Page 1 - PLAINTIFF'S ORIGINAL COMPLAINT

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3.

2 At all relevant times Defendant, AMY SPICER ("A. Spicer") is a resident of the  
3 County of Multnomah, in the State of Oregon.

4

4.

5 At all relevant times Defendant, MARY LOU SPICER ("M.L. Spicer") is a resident of  
6 the County of Multnomah, in the State of Oregon.

7

5.

8 At all relevant times Defendant, JUSTIN SPICER ("J. Spicer") is a resident of  
9 Multnomah County, in the State of Oregon.

10

6.

11

12 At all relevant times Defendant, ANDREW SPICER ("A. Spicer") is a resident of  
13 Multnomah County, in the State of Oregon.

14

7.

15

16 Additionally, Plaintiff is informed and believes and through this information and  
17 belief allege that the defendants, and each of them, were the agents, representatives, partners,  
18 joint venturers or employees of one another, and that the acts and omissions which form the  
19 basis of this Complaint were committed or omitted in the course and scope of said agency,  
representation, partnership, joint venture or employment; in addition to their individual  
liability which may also be found herein.

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8.

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22 Plaintiff reserves the right to amend such claims and damages amounts, as they  
become discovered in the course of this litigation.

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**FIRST CAUSE OF ACTION**

(Breach of Duty of Good Faith and Fair Dealing: Michael Spicer)

9.

On or about August of 1997 Spirit Enterprises, Inc. was formed and it purchased the assets of the Oregon Business, Stan the Hot Water Heater Man. The shareholders of Spirit Enterprises who purchased those assets were Michael Spicer ("M. Spicer") and Randy Ritmiller ("Ritmiller").

10.

As a part of his administrative duties Michael Spicer was to make general accounting entries, and compile and provide documents for the preparation of the taxes for the business and the shareholders. Randy Ritmiller, the other owner and shareholder, was the responsible managing individual (licensed plumber) and the only licensed and bonded plumbing contractor for Spirit Enterprises from 1997 through May 2013. On or before January 2008 Michael Spicer entered into and perpetuated a scheme and artifice to defraud Spirit Enterprises and Randy Ritmiller through, but not limited to (a) fraudulent tax and accounting entries; (b) nondisclosed and unauthorized personal credit payments; (c) nondisclosed and unauthorized additional shareholder disbursements to himself; (d) nondisclosed and unauthorized payments to family members; (e) nondisclosed and unauthorized payments made to personal creditors of himself and his family members; (f) creating nondisclosed and unauthorized additional credit card accounts for his family members for their personal expenses on Spirit Enterprise credit accounts; and (g) nondisclosed and unauthorized *interested party* transactions and "loans" to himself from Spirit Enterprise accounts.

11.

On multiple occasions in 2008 through present Michael Spicer made intentional, material representations and/or omissions to Randy Ritmiller regarding accounting entries referencing lower owner distribution payments to himself, when in fact there were multiple additional non-disclosed distributions made payable to Michael Spicer over and above those

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1 made payable to Mr. Ritmiller. Due to Michael Spicer's mother's (Mary Lou Spicer) status  
 2 as office manager/bookkeeper, Randy Ritmiller relied upon these misrepresentations and  
 3 material omissions in accepting the tax documents and what bookkeeping was turned over to  
 4 him reflecting that shareholder distributions were always made according to the shareholder  
 5 percentages for both of Spirit's shareholders.

6 12.

7 Additionally, as part of this scheme and artifice to defraud Spirit Enterprises and Mr.  
 8 Ritmiller from at least 2008 through present, Michael Spicer has claimed and admitted to  
 9 unauthorized and unapproved *interested shareholder* loan(s) in contravention of the Bylaws  
 10 of Spirit Enterprises.

11 13.

12 At no point were these additional distribution payments, or claimed loans referenced  
 13 above authorized by Randy Ritmiller, and he is the only disinterested shareholder that could  
 14 have approved such additional disbursement and loans. Additionally and again, due to Mary  
 15 Lou Spicer's status as office manager for Spirit Enterprises, Randy Ritmiller relied upon these  
 16 misrepresentations and material omissions made to him by Michael Spicer or Mary Lou  
 17 Spicer when conducting shareholder business for Spirit Enterprises.

18 14.

19 These multiple shareholder distributions were not disclosed and were intentionally  
 20 omitted from bookkeeping disclosures to Mr. Ritmiller to whom he owed a fiduciary duty and  
 21 a duty of loyalty. These duties to Mr. Ritmiller were breached by Michael Spicer due to these  
 22 multiple omissions and misrepresentations.

23 15.

24 From February of 2008 through 2013 Michael Spicer and Mary Lou Spicer made  
 25 these representations and/or material omissions of these additional disbursements and  
 26

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1 unauthorized shareholder personal transactions to Randy Ritmiller via accounting entries  
 2 referencing at least a portion of such funds as "retained earnings" of the company.

3 16.

4 More specifically, as part of this scheme and artifice to defraud Mr. Ritmiller, from  
 5 2008 through 2013 Michael Spicer, Amy Spicer and Justin Spicer took several direct,  
 6 unauthorized payments made payable to themselves in the form of nonbusiness related credit  
 7 card authorizations and accounts, after referring to them in the physical accounting and  
 8 bookkeeping records and physical check register as retained earnings, or not reporting them in  
 9 any respect on the disclosed accounting records.

10 17.

11 Seemingly emboldened by the success of their scheme and artifice to defraud Mr.  
 12 Ritmiller, Andrew Spicer received the benefit of funds expended on his behalf for fraternity  
 13 housing at Washington State University, Washington State University tuition payments, and  
 14 other college related expenses paid for from funds and/or credit of Spirit Enterprises.

15 18.

16 Again, at no point between were the above referenced Washington State Univeristy  
 17 and college related payments authorized by Randy Ritmiller. Further and again, due to Mary  
 18 Lou Spicer's status as office manager and Michael Spicer's role as the shareholder in charge  
 19 of such accounting and administrative duties, Randy Ritmiller was mislead by these  
 20 misrepresentations and material omissions in believing that he was receiving his proper forty-  
 21 nine (49%) shareholder disbursements .

22 19.

23 As a direct result of this scheme and artifice to defraud Spirit Enterprises, economic  
 24 damages were incurred in an amount to be better proven at trial, but not to exceed One-  
 25 Million and No/Cents Dollars (\$1,000,000.00). Additionally, per ORS 82.010 Plaintiffs  
 26

1 demand that prejudgment interest begin to run on these fraudulently appropriated amounts  
2 from the date of misappropriation in the amount of nine-percent (9%) per annum.

**SECOND CAUSE OF ACTION**  
(Breach of Duty of Full Disclosure: Michael Spicer)

20.

Plaintiff herein fully incorporates paragraphs 9 through 19 above.

21.

9           Mr. Ritmiller was owed a duty of full disclosure by Michael Spicer of any *interested*  
10        dealings and funds of Spirit Enterprises being diverted for the personal benefit of Michael  
11        Spicer, Amy Spicer, Mary Lou Spicer, Justin Spicer and Andrew Spicer. Mr. Ritmiller was  
12        not given full disclosure of these transactions. Accordingly, Mr. Spicer breached his duty to  
13        fully disclose such payments for he and his family's personal expenses to Mr. Ritmiller

22

As a direct result of this scheme and artifice to defraud Mr. Ritmiller, economic damages were incurred in an amount to be better proven at trial, but not to exceed One-Million and No/Cents Dollars (\$1,000,000). Additionally, per ORS 82.010 Plaintiffs demand that prejudgment interest begin to run on these fraudulently appropriated amounts from the date of misappropriation in the amount of nine-percent (9%) per annum.

### **THIRD CAUSE OF ACTION**

23

25 Plaintiff herein fully incorporates paragraphs 9 through 19, and 21 through 22 above.

24.

Michael Spicer and Mary Lou Spicer made misrepresentations and material omissions of equal shareholder disbursements and shareholder income derived from Spirit Enterprises by Michael Spicer and Randy Ritmiller in their respective 51% to 49% shareholder ownership stakes in the disclosed accounting and tax documents.

25.

These material misrepresentations and omissions of material fact of such unequal shareholder disbursements and unequal income derived from Spirit Enterprises by Michael Spicer made by Mary Lou Spicer and Michael Spicer were intentionally made to induce Mr. Ritmiller to rely upon such fraudulent, misleading accounting and tax documents in thinking that he was receiving his proper ownership percentage of the shareholder distributions and income of Spirit Enterprises.

26.

As a direct result of this scheme and artifice to defraud Mr. Ritmiller, economic damages were incurred in an amount to be better proven at trial, but not to exceed One-Million and No/Cents Dollars (\$1,000,000.00). Additionally, per ORS 82.010 Plaintiffs demand that prejudgment interest begin to run on these fraudulently appropriated amounts from the date of misappropriation in the amount of nine-percent (9%) per annum.

**FOURTH CAUSE OF ACTION**  
(Conversion: Justin Spicer)

27.

Plaintiff herein fully incorporates paragraphs 9 through 19, 21 through 22 and 25 and 26 of the above causes of actions.

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28.

2 On or about 2009 Michael Spicer's son, Justin Spicer was hired by Spirit Enterprises  
 3 by and through Michael Spicer to perform general plumbing work for Spirit Enterprises.

4

29.

5 During Justin Spicer's employment with Spirit Enterprises he materially participated  
 6 in Michael Spicer's scheme and artifice to defraud Spirit Enterprises including, but not  
 7 limited to making several nonbusiness related purchases for his personal benefit. Therefore,  
 8 Justin Spicer received the benefit of funds that he knew or should have known was not his to  
 9 be properly benefiting from, as he was not the rightful owner of such funds.

10

30.

11 As a result of Justin Spicer's participation in this scheme and artifice to defraud and  
 12 his intent to permanently deprive the rightful owner of the funds and credit he was spending  
 13 on personal expenses, economic damages were incurred by Mr. Ritmiller in an amount to be  
 14 better proven at trial, but not to exceed Fifty Thousand and No/Cents Dollars (\$50,000).  
 15 Additionally, per ORS 82.010 Plaintiffs demand that prejudgment interest begin to run on  
 16 these fraudulently appropriated amounts from the date of misappropriation in the amount of  
 17 nine-percent (9%) per annum.

18

**FIFTH CAUSE OF ACTION**

(Conversion: Michael Spicer, Mary Lou Spicer,  
 Amy Spicer, Justin Spicer and Andrew Spicer)

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31.

22 Plaintiff herein fully incorporates paragraphs 9 through 19, 21 through 22, 25 and 26,  
 23 and 29 through 30 of the above causes of actions.

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32.

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As Spirit Enterprises was the rightful owner of the funds expended through Michael Spicer's scheme and artifice to defraud the business, and since those funds were spent for the benefit of Michael Spicer, Amy Spicer, Mary Lou Spicer, Justin Spicer and Andrew Spicer with the intent to permanently deprive Spirit Enterprises and flowing through to Mr. Ritmiller of those funds, each of these individuals intentionally meant to permanently convert those funds for their personal benefit.

8

33.

9

As Spirit Enterprises funds were converted by Michael Spicer, Amy Spicer, Mary Lou Spicer, Justin Spicer and Andrew Spicer they have respectively and/or individually caused Mr. Ritmiller economic damages in an amount to be better proven at trial, but not to exceed One Million and No/cents Dollars (\$1,000,000). Additionally, per ORS 82.010 Plaintiffs demand that prejudgment interest begin to run on the worth of these converted amounts from the date of conversion in the amount of nine-percent (9%) per annum.

15

#### **SIXTH CAUSE OF ACTION**

16

(Intentional Infliction of Emotional Distress:  
Michael Spicer, Amy Spicer and Mary Lou Spicer)

17

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34.

19

Plaintiff herein fully incorporates paragraphs 9 through 19, 21 through 22, 25 and 26, 29 through 30, and 34 through 35 of the above causes of actions.

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35.

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By and through this scheme and artifice to defraud, unjustly enrich and to convert from Mr. Ritmiller, Michael Spicer, Amy Spicer and Mary Lou Spicer intended to inflict severe emotional stress on Mr. Ritmiller. Randy Ritmiller actually incurred severe emotional distress due to Michael Spicer, Amy Spicer and Mary Lou Spicer's intentional acts, and the

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1 entirety of these actions constitute an extraordinary transgression outside the bounds of  
2 socially tolerable conduct.

3 36.

4 Due to this intentional infliction of emotional distress upon Randy Ritmiller, he has  
5 incurred economic damages and non-economic damages in an amount to be better proven at  
6 trial, but not to exceed Five Hundred Thousand and No/Cents Dollars (\$500,000).

7

**SEVENTH CAUSE OF ACTION**

(Violation of ORS 60.952/Oppressive, Illegal and Fraudulent Acts  
by Majority Shareholder: Michael Spicer)

8 37.  
9 Plaintiff herein fully incorporates paragraphs 9 through 19, 21 through 22, 25 and 26,  
10 29 through 30, and 34 through 35 of the above causes of actions.  
11

12 38.

13 After Mr. Ritmiller started asking about his financial concerns with Michael Spicer,  
14 Michael Spicer initiated the removal of Mr. Ritmiller from Spirit Enterprises via oppressive,  
15 and fraudulent means.

16 39.

17 Specifically, Michael Spicer terminated Mr. Ritmiller's employment without cause on  
18 or about May 2013, caused illegal tax actions to be innocently filed by Mr. Ritmiller on  
19 multiple occasions starting on or before the tax year 2011, and has defrauded Mr. Ritmiller  
20 via his scheme and artifice to do so via misrepresented, materially omitted accounting records  
21 secreting his illegal interested shareholder transactions and extra income derived from Spirit  
22 Enterprises over and above his rightfully owed fifty-one percent (51%) ownership stake in  
23 Spirit Enterprises since on or before 2008.

24 ///

25 ///

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Furthermore, Michael Spicer offered Mr. Ritmiller Four Hundred Thousand and  
 3 No/cents Dollars (\$400,000) for his share of the business in 2012 and 2013 regardless of the  
 4 fact that he and Mr. Ritmiller had decided on or about 2008 that the company was worth  
 5 approximately Seven Hundred and Fifty Thousand and No/cents dollars (\$750,000) per  
 6 shareholder with a total valued worth of approximately One Million Five Hundred  
 7 Thousand and No/cents Dollars (\$1,500,000). When Mr. Ritmiller ultimately rejected this  
 8 offer, Michael Spicer threatened Mr. Ritmiller with a serious cut in his funds from Spirit  
 9 Enterprises and made other derogatory threats, detailing even that Mr. Ritmiller contributed  
 10 nothing more than what could be had from a hired licensed plumber and that he was not worth  
 11 more than that to the company.

12

41.

13

Additionally, Michael Spicer and his wife, Amy Spicer repeatedly communicated and  
 14 texted with Mr. Ritmiller and his wife using profane and other derogatory language in an  
 15 attempt to demean and belittle Mr. Ritmiller and his wife.

16

42.

17

Also and most heinously, Michael Spicer, Amy Spicer and other members of the  
 18 Spicer family made payment arrangements for a week-long vacation to Hawaii that was paid  
 19 for using Spirit Enterprise funds and credit. The payments and arrangements for his vacation  
 20 took place the very week that Mr. Ritmiller and his wife lost their daughter, Whitney Heichel,  
 21 a barista in Gresham, Oregon who was kidnapped and murdered and for which a multi-day  
 22 search party and manhunt was issued. The vacation that the Spicer family went on just a  
 23 couple of weeks later misappropriated additional funds of approximately Thirteen Thousand  
 24 and No/cents Dollars (\$13,000).

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43.

2 Due to the oppressive, illegal and fraudulent acts of Michael Spicer, Mr. Ritmiller has  
 3 suffered economic damages in an amount to be better proved at trial, but not to exceed One-  
 4 Million Two Hundred and Fifty Thousand and No/cents Dollars (\$1,250,000). Furthermore,  
 5 Mr. Ritmiller respectfully requests that the court exercise its powers under ORS 60.952 to  
 6 have Michael Spicer purchase Mr. Ritmiller's shares at a "fair value" of Seven Hundred Fifty  
 7 Thousand and No/cents Dollars (\$750,000) and award an additional amount of Five Hundred  
 8 Thousand and No/cents dollars (\$500,000) in damages for his oppressive, illegal and  
 9 fraudulent actions taken against Mr. Ritmiller, in addition to any other equitable remedies that  
 10 the court finds just and equitable for the acts perpetrated against him. Also, per ORS 82.010  
 11 Plaintiffs demand that prejudgment interest begin to run on the worth of these  
 12 misappropriated amounts from the date of conversion in the amount of nine-percent (9%) per  
 13 annum.

14

**EIGHTH CAUSE OF ACTION**

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(Unjust Enrichment: Michael Spicer, Amy Spicer,  
 Mary Lou Spicer, Justin Spicer and Andrew Spicer)

16

44.

17

Plaintiff herein fully incorporates paragraphs 9 through 19, 21 through 22, 25 and 26,  
 18 29 through 30, 34 through 35 and 38 through 43 of the above causes of actions.

19

45.

20

By and through this scheme and artifice to defraud; convert funds, materials and  
 21 supplies from Spirit Enterprises; and defame Spirit Enterprises for the benefit of themselves,  
 22 Michael Spicer, Amy Spicer, Justin Spicer and Mary Lou Spicer have been unjustly enriched  
 23 by obtaining money and other things of value from Plaintiff without the permission of  
 24 Plaintiff. Specifically including, but not limited to the following: Spirit Enterprises funds  
 25 were being depleted by their use of Spirit Enterprise credit cards for their own personal  
 26

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1 expenses. There may yet be undiscovered accounts and personal expenses where  
2 misappropriated Spirit Enterprises funds have been diverted for their personal benefit.

3 46.

4 By and through this scheme and artifice to defraud, and convert funds from Spirit  
5 Enterprises flowing through to the minority shareholder, Randy Ritmiller ; Michael Spicer,  
6 Amy Spicer, Justin Spicer and Mary Lou Spicer have been unjustly enriched by obtaining  
7 money and other things of value from Plaintiff without the legal right or the permission of  
8 Plaintiff.

9 47.

10 Due to this unjust enrichment Plaintiff has been damaged in an amount which shall be  
11 better proven at trial, but in no event shall be less than Five Hundred Thousand and No/cents  
12 Dollars (\$500,000). Additionally, per ORS 82.010 Plaintiffs demand that prejudgment  
13 interest begin to run on the worth of these misappropriated amounts from the date of  
14 conversion in the amount of nine-percent (9%) per annum.

15 16 **NINTH CAUSE OF ACTION**

17 18 (Intentional Infliction of Emotional Distress:  
19 Michael Spicer and Amy Spicer)

20 48.

21 Plaintiff herein fully incorporates paragraphs 9 through 19, 21 through 22, 25 and 26,  
22 29 through 30, 34 through 35, 38 through 43, and 44 through 47 of the above causes of  
23 actions.

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25 ///

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49.

2 By and through this scheme and artifice to defraud, unjustly enrich and convert from,  
3 and to defame Spirit Enterprises and its minority shareholder, Randy Ritmiller; Michael  
4 Spicer, Amy Spicer and Mary Lou Spicer intended to inflict severe emotional stress on Randy  
5 Ritmiller and Lorilei Ritmiller. Randy Ritmiller and Lorilei Ritmiller actually incurred severe  
6 emotional distress due to Michael Spicer, Amy Spicer and Mary Lou Spicer's intentional acts  
7 by the callous disregard for the emotional and monetary burdens placed upon the Mr.  
8 Ritmiller when he and his wife lost their daughter, through the vicious and derogatory texts  
9 that included profane language, and the entirety of their actions which constitute an  
10 extraordinary transgression outside the bounds of socially tolerable conduct.

50.

12 Due to this intentional infliction of emotional distress upon Randy Ritmiller, they  
13 have individually and conjunctively incurred economic damages and non-economic damages  
14 in an amount to be better proven at trial, but not to exceed Five Hundred Thousand and  
15 No/Cents Dollars (\$500,000).

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## **PUNITIVE DAMAGES**

18 Per ORS §31.725 *et seq.* Plaintiffs hereby give notice that they may seek to amend  
19 this Complaint in the future and at the appropriate time to include a claim for punitive  
20 damages.

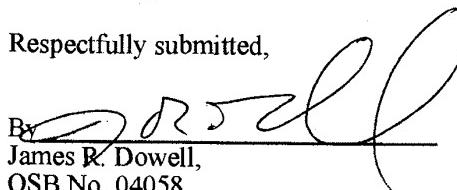
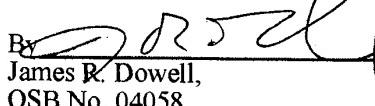
21 | Wherefore, Plaintiffs pray for a judgment:

- 22 (a) awarding Plaintiff economic damages to be proven at trial, which are not to  
23 exceed \$1,000,000 for Michael Spicer's breach of the duty of good faith and  
24 fair dealing;

25 (b) awarding Plaintiff economic damages to be proven at trial, which are not to  
26 exceed \$1,000,000 for Michael Spicer's breach of the duty of full disclosure;

- 1                     (c) awarding Plaintiff economic damages to be proven at trial, which are not to  
2                     exceed \$1,000,000 those damages incurred related to scheme and artifice to  
3                     defraud Randy Ritmiller as to Michael Spicer and Mary Lou Spicer;  
4                     (d) awarding Plaintiffs economic damages to be proven at trial, which are not to exceed  
5                     \$1,000,000 for those damages related to the conversion of funds for the  
6                     benefit of Michael Spicer, Amy Spicer, Justin Spicer and Mary Lou Spicer;  
7                     (e) awarding Plaintiffs damages to be proven at trial, which are not to exceed  
8                     \$500,000 for those damages related to the claim for ORS 60.952 oppressive,  
9                     illegal and fraudulent acts over and above ordering Mr. Spicer to pay Mr.  
10                    Ritmiller "fair value" for his shares in the company;  
11                    (f) awarding Plaintiffs economic damages to be proven at trial, which are not to exceed  
12                    \$30,000 for those damages related to the conversion of funds for the  
13                    benefit of Andrew Spicer;  
14                    (g) awarding Plaintiffs damages to be proven at trial, which are not to exceed  
15                    \$500,000 for Michael Spicer, Amy Spicer and Mary Lou Spicer's intentional  
16                    infliction of emotional distress with regard to Randy Ritmiller;  
17                    (h) awarding Plaintiffs any and all appropriate and applicable prejudgment interest  
18                    per ORS 82.010;  
19                    (i) awarding Plaintiffs any and all reasonable costs and disbursements allowable  
20                    herein; and  
21                    (j) granting such other relief as may be equitable and just.

22                   Respectfully submitted,

23                     
24                   By   
25                   James R. Dowell,  
26                   OSB No. 04058  
                     TX Bar No. 24036498  
                     **ATTORNEY FOR PLAINTIFF**

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IN THE CIRCUIT COURT OF THE STATE OF OREGON  
FOR THE COUNTY OF MULTNOMAH

6 RANDY RITMILLER, for himself and  
7 derivatively on behalf of Spirit Enterprises  
of Oregon, Inc., a nominal defendant,

8 Plaintiff,

9 v.

10 MICHAEL SPICER, and SPIRIT  
ENTERPRISES OF OREGON, INC.,  
11 (D/B/A Stan the Hot Water Man), an  
Oregon corporation,

Defendants.

14

15 Plaintiff Randy Ritmiller ("Ritmiller"), directly on his behalf and derivatively on  
16 behalf of Spirit Enterprises of Oregon, Inc. (the "Company"), asserts the following claims:  
17

## STATEMENT OF THE CASE

10

These claims arise out of the discovery by Ritmiller, 49 percent shareholder of the Company, that the Company's majority shareholder, Michael Spicer, and his family have improperly taken out of the Company hundreds of thousands of dollars in personal expenses, extra shareholder distributions, and "loans" over the last several years. The extra distributions paid to Michael Spicer amounted to \$124,550 just since 2008. The expenses include, but are not limited to:

26 1. College tuition for one of Michael Spicer's children;

2. Travel to and shopping in Las Vegas;
3. Travel to and entertainment in Hawaii;
4. Fraternity fees;
5. Cosmetic procedures; and
6. NASCAR experience.

2

When Ritmiller raised concerns regarding the operation of the Company,

Michael Spicer:

1. Fired Ritmiller;
2. Unilaterally removed Ritmiller as a director;
3. Refused and delayed full disclosure of the Company's books and records;
4. Cut off Ritmiller's salary and benefits;
5. Reduced or eliminated distributions to Ritmiller (at a time when the Company's gross revenues rose from \$2.5 million in 2011 to \$2.9 million in 2013); and
6. Quadrupled his own salary.

3

Ritmiller seeks to correct these abuses and to prevent further harm to both him and the company by bringing claims for minority shareholder oppression under ORS 60.952, fiduciary duty, breach of contract, fraud, conversion, unjust enrichment, and aiding and abetting. Ritmiller seeks damages (plus applicable pre- and post-judgment interest as allowed by law) and other relief, including, but not limited to:

- An order requiring that Michael Spicer be removed as director and officer of the Company and that an independent custodian and/or director be appointed;

- An order requiring the Company to cease payment of personal expenses for Michael Spicer and members of his family;
  - An accounting of the money taken out of the Company by Michael Spicer and his family members, whether characterized as income, distributions, personal expenses, shareholder loans, or otherwise;
  - An order requiring that improper shareholder loans be documented with a payment schedule, appropriate interest, security, and promissory note;
  - An order requiring that the Company make an equalization of distributions consistent with the relative ownership of Company shares between Michael Spicer and Ritmiller;
  - An order requiring the Company to pay for an appraisal of the undiscounted fair value of the shares in the Company;
  - An order requiring the Company to redeem Ritmiller's shares in the Company at their undiscounted fair value;
  - Reasonable attorney fees and costs based on the substantial benefits realized by the Company through this action; and
  - Appropriate injunctive relief and such other relief as may be just and equitable.

## THE PARTIES

4

21 Ritmiller is a resident of Multnomah County in the State of Oregon, was at all  
22 times a 49 percent shareholder of the Company, and was a director and employee of the  
23 Company until his termination by Michael Spicer in June 2013. Ritmiller has been a shareholder  
24 at all times during the actions complained of herein.

25      ///

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1

5

2 Defendant Michael Spicer is a resident of Clark County in the State of  
 3 Washington. Michael Spicer owns the other 51 percent of the shares of the Company and  
 4 currently serves as president and director of the Company.

5

6

6 The Company is now, and at all times has been, a closely held "S" corporation  
 7 organized under the laws of Oregon. Its principal place of business is located in Wood Village,  
 8 Oregon in Multnomah County. The Company provides hot water heating services as "Stan the  
 9 Hot Water Man" in the Portland metropolitan area. To maintain S-corporation status, S-  
 10 corporations must comply with several requirements, including the requirements that there be  
 11 only one class of stock and that all shareholders receive equal distributions based on their  
 12 percentage of share ownership.

13

### **FACTS COMMON TO ALL CLAIMS**

14

7

15 In 1997, Ritmiller and Michael Spicer purchased the Company for \$400,000 from  
 16 Michael Spicer's father. Beginning at that time, Michael Spicer handled administrative duties of  
 17 the Company while Ritmiller was the Company's lead licensed and bonded plumbing contractor.

18

8

19 From 1998 through 2013, Ritmiller trusted his partner and understood that both  
 20 would treat each other fairly, honestly, and in a manner that protected each shareholder's right to  
 21 participate and benefit equally from their respective ownership of the Company.

22

#### **(Personal Expenses)**

23

9

24 In 2013, the tight friendship and trust between Ritmiller and Michael Spicer  
 25 soured when Ritmiller learned that his partner was secretly using substantial amounts of money  
 26

1 from Company accounts to fund his family's lavish lifestyle and to deprive Ritmiller the benefits  
 2 of ownership.

3 10

4 After independently obtaining and reviewing Company credit card statements in  
 5 or around February 2013, Ritmiller discovered that Michael Spicer had been charging thousands  
 6 of dollars in personal expenses to the Company's credit cards to pay for, among other things,  
 7 vacations, expensive dinners, college tuition, and thousand-dollar personal purchases at various  
 8 stores for the benefit of himself and his family. During 2012 alone, Michael Spicer's personal  
 9 use of the Company credit card amounted to more than \$100,000. The amount and timing of  
 10 each payment or charge is ascertained or easily ascertainable from contemporaneous credit card  
 11 account statements and other Company records.

12 11

13 Examples of the charges Michael Spicer and/or his family members put on the  
 14 Company credit card include:

- 15 a. \$6,193.22 in charges to the Bellagio Hotel in Las Vegas, Nevada, in or  
     16 around January 2012, including \$3,286.24 to a luxury eyeglasses retailer  
     17 in the hotel;
- 18 b. In excess of \$10,000 in charges for travel, hotels, meals, rental cars, and  
     19 entertainment in Hawaii in September and November 2012;
- 20 c. In excess of \$10,000 in charges at hotels, resorts, rental cars, and golf  
     21 clubs in and around Palm Desert, California, over the course of multiple  
     22 trips beginning in 2011 at the latest and continuing at least until 2013;
- 23 d. In excess of \$30,000 in airfare charges from January 2011 through  
     24 June 2013 alone, often with four or more flights purchased at the same  
     25 time;

26

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- 1                   e. \$2,253.45 in charges at the Nordstrom clothing store in or around May and  
 2                   June 2012;
- 3                   f. \$1,117 in charges to the True Religion clothing store in or around  
 4                   December 2011;
- 5                   g. \$998 in charges to the Richard Petty Driving School in or around  
 6                   December 2011;
- 7                   h. \$1,808 in total charges to The Waldorf Center for Plastic Surgery in or  
 8                   around February and May 2012; and,
- 9                   i. In excess of \$35,000 in tuition, fraternity fees, and other costs at  
 10                  Washington State University beginning in 2011 and continuing at least  
 11                  through March 2013.

12                  12

13                  Michael Spicer's personal use of Company funds extended beyond the Company's  
 14                  credit card and the Company's checking account. For instance, the Company's check ledgers  
 15                  reflect a payment of more than \$24,000 in connection with Michael Spicer's life insurance  
 16                  policy. The amount and timing of each payment is ascertained or easily ascertainable from  
 17                  contemporaneous checking account statements, Company ledgers, and other Company records.

18                  **(Unbalanced Distributions and Shareholder Loans)**

19                  13

20                  On multiple occasions Michael Spicer received payments from the Company  
 21                  characterized as 51 percent distributions that were not accompanied by 49 percent distributions  
 22                  to Ritmiller. Just since 2008, the Company made the following distributions to Michael Spicer  
 23                  without accompanying distributions to Ritmiller:

- 24                   • \$40,400 in payments recorded in the Company's ledgers as "51%  
 25                   Dist[ributions]" in 2008;
- 26                   • \$20,400 in such payments in 2009;

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- \$30,600 in such payments in 2010; and
  - \$33,150 in such payments in 2011.

14

The Company's records reflect that these improper distributions may have been converted into shareholder loans. As of December 31, 2013, the Company records reflected that Michael Spicer's shareholder loans amounted to \$260,096. However characterized, these unilateral and unbalanced payments deprive Ritmiller of the full benefits of his 49 percent ownership share in the Company, violate the Company's Articles and Bylaws ("Bylaws") (Article VII), and potentially jeopardize the Company's status as an S-corporation.

15

11 The personal expense payments, loans, and unequal distributions to  
12 Michael Spicer are improper because:

- Michael Spicer was interested in and personally benefited from each such payment, loan, or distribution;
  - Michael Spicer consequently had an obvious conflict of interest in connection with each such payment, which he caused, approved, or otherwise knowingly permitted.
  - The payments, loans, and distributions were not approved by Ritmiller, as holder of the majority of votes excluding those of Michael Spicer;
  - The Company's Board of Directors did not determine that the payments, loans, and distributions benefitted the Company;
  - The Company's Board of Directors did not approve the payments, loans, and distributions;
  - The loans and personal expenses serve no legitimate business purpose;
  - There is no promissory note or commitment to repay the amounts loaned;
  - The loans carry inadequate or no rate of interest;

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- 1                     • The loans are not secured;
- 2                     • The payments, loans, and distributions are unequal and deprive Ritmiller  
3                         of the rights and benefits of a 49 percent shareholder; and
- 4                     • The payments and loans are not fair to the Company.

5                     16

6                     According to records received, not one dollar of the amounts taken by

7                     Michael Spicer since at least 2008 (and presumably earlier) has been repaid.

8                     (Discovery)

9                     17

10                    Michael Spicer represented to Ritmiller and assured him that both shareholders  
11                    would be treated equally relative to their ownership interests in the Company, and that neither  
12                    Michael Spicer nor his family would take substantial and disproportionate amounts of money out  
13                    of the Company for personal purposes through credit card use, distributions, or otherwise.  
14                    Ritmiller relied on and trusted Michael Spicer to honor these promises.

15                     18

16                    Material facts relating to personal expenses paid on behalf of Michael Spicer and  
17                    his family by the Company, unequal shareholder distributions, and shareholder loans to  
18                    Michael Spicer were concealed and continue to be withheld from Ritmiller as 49 percent  
19                    shareholder and, previously, as director.

20                     19

21                    It was not until around February 2013 that Ritmiller independently obtained  
22                    excerpts of the Company's ledgers and bank account records detailing the extra shareholder  
23                    distributions to Michael Spicer and the personal expenses incurred on the Company's credit cards  
24                    by Michael Spicer and his family members. Prior to this discovery in 2013, Ritmiller was  
25                    unaware of the abuses alleged herein.

26

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## (Squeeze Out of Ritmiller)

20

After Ritmiller raised concerns about the Company's operations to  
er, Michael Spicer swiftly excluded Ritmiller from the Company's operations. On  
2013, Michael Spicer suspended Ritmiller's employment without cause.  
er locked Ritmiller out of the Company's offices, denied Ritmiller full disclosure of  
s financials, and even had Ritmiller's van (which contained his personal equipment  
ing) taken from him. In June 2013, Michael Spicer terminated Ritmiller without

21

11 At the time of his termination without cause, Ritmiller's salary with the Company  
12 was \$30,000 per year, and Ritmiller received health insurance from the Company for himself and  
13 his family.

22

15 Soon after Ritmiller's ouster, the Company noticed a special shareholders meeting  
16 for June 20, 2013, for the purpose of "[r]emov[ing] members of the Board of Directors of the  
17 Company" and "[e]lect[ing] members of the Board of Directors of the Company." Ritmiller was  
18 removed as director of the Company and Michael Spicer, as the remaining director, then selected  
19 his wife, Amelia Spicer, to replace Ritmiller as director of the Company.

23

21 The following month, Michael Spicer quadrupled his own salary with the  
22 Company, increasing it by \$90,000 to \$120,000, not including his personal use of Company  
23 funds and other benefits.

24

25 As of 2014, there are no fewer than seven members of the Spicer family on the  
26 Company's payroll.

1

25

2 In 2013, the Company had sufficient earnings to make additional distributions.  
 3 Despite a growth in the Company's total income from \$2.5 million in 2011 to \$2.9 million in  
 4 2013, and the Company's cash position more than tripling from \$47,189 to \$152,868, the  
 5 Company reduced distributions to Ritmiller in 2013 by approximately 60 percent. This  
 6 significant reduction further impaired Ritmiller's finances, which were already subject to a tax  
 7 lien of \$111,995.86.

8

26

9 At this time, Michael Spicer and Ritmiller were discussing the possible sale of  
 10 Ritmiller's shares in the Company. Michael Spicer's termination of Ritmiller's salary and  
 11 significant reduction in shareholder distributions was intended to pressure Ritmiller to sell his  
 12 shares at a reduced value.

13

#### **(Lack of Full Disclosure)**

14

27

15 During all relevant times, Michael Spicer has exercised control over the  
 16 Company's financial and accounting records. Since around April 2013, Ritmiller has made  
 17 several shareholder demands for access to the Company's records. Ritmiller finally received  
 18 productions of some, but not all, of the documents requested in July, August, and October 2014.  
 19 These productions have revealed even more improper personal use of Company funds and  
 20 unequal distributions.

21

28

22 The records received by Ritmiller have been inconsistent, creating serious  
 23 questions concerning treatment of personal expenses, loans, and distributions. For instance, it  
 24 remains unclear which personal expenses are treated as shareholder loans or distributions.  
 25 Likewise, it is not readily apparent how all payments to Michael Spicer recorded in the  
 26

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1 Company's ledgers as "51% Dist[ributions]" have been treated. Examples of these  
2 inconsistencies include the following:

- Personal credit card expenses were not recorded as either shareholder distributions or shareholder loans until 2013.
  - The personal credit card expenses that were treated as loans in 2013 are unspecified and do not capture the full amount of personal spending that occurred in 2013 or any of the personal spending that occurred in previous years.
  - Interest on the shareholder loans was not charged until 2010. Company records reflect that Michael Spicer was charged an interest rate of 2.38 percent, while Mr. Ritmiller was charged 3.27 percent. Other records reflect different interest rates.
  - Despite payments from the Company to Michael Spicer being characterized in the Company ledgers as "51% Dist[ributions]" and payments from the Company to Randy Ritmiller being characterized in the Company ledgers as "49% Dist[ributions]," payments to Michael Spicer amounted to far in excess of 51 percent of such payments and payments to Ritmiller amounted to far short of 49 percent of such payments.

29

20 In addition, Ritmiller has not received Company records that would reflect  
21 personal expenses, distributions, loans, or other payments that occurred before 2008, and he has  
22 not received sufficient documentation to confirm the full extent and nature of personal spending  
23 that occurred from 1998 to present. The true extent to which Company funds have been  
24 misappropriated therefore remains unknown.

25      ///

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### **(Demand Futility)**

30

3                   A formal demand on the Company to account for and rectify these improper acts  
4                   would be futile because (1) the current directors were beneficiaries of the personal expenditures,  
5                   unequal distributions, and improper loans, and therefore could not be disinterested or  
6                   independent for purposes of responding to a demand; (2) there are no disinterested or  
7                   independent directors; and (3) none of the abuses giving rise to this action served a legitimate  
8                   business purpose. The directors and counsel for the Company have been on notice of these  
9                   wrongs since the filing of the initial Complaint in this action in June 2013, in addition to  
10                  numerous communications to the board since. No corrective action has been taken.

**FIRST CLAIM FOR RELIEF**  
**(Breach of Fiduciary Duty—Derivative Claim)**

13 31

14 Ritmiller realleges and incorporates by reference paragraphs 1 through 30 above.

32

16 At all relevant times Michael Spicer, as director and officer of the Company, has  
17 owed (and continues to owe) the Company the fiduciary duty of care, loyalty, and to act in good  
18 faith and in a manner he reasonably believes to be in the best interests of the Company and its  
19 shareholders.

20 33

21 As alleged above, Michael Spicer has breached his fiduciary duties and wasted  
22 corporate assets through a widespread and continuous misuse of Company assets. The abuses  
23 alleged above did not serve legitimate business purposes, were not fair to the Company, and  
24 were plagued by Michael Spicer's obvious conflicts of interest. These abuses included:

- Making or approving the expenditure of Company funds for personal purposes;

- Making or approving payments from the Company to himself characterized as "51% Dist[ributions]" that were not accompanied by 49 percent distributions to Ritmiller;
  - Unilaterally taking unapproved, unfair, and undocumented loans from the Company without any security, adequate interest, or commitment to repayment; and
  - Quadrupling his salary from \$30,000 to \$120,000 in 2013.

34

9                   The Company has sustained monetary damages in an amount to be proven at trial  
10          as a result of these abuses.

35

12                   The Company further has no adequate remedy at law to fully correct and protect it  
13                  against the abuses alleged above. The court should order such equitable relief as is necessary to  
14                  protect the Company, including, but not limited to:

- An order requiring the Company to cease payment of personal expenses for defendant Michael Spicer and his family members;
  - An accounting of the personal expenses, extra distributions, and undocumented and unapproved loans to Michael Spicer;
  - To the extent amounts taken from the Company are not repaid through a damages award in favor of the Company, an order requiring Michael Spicer to execute a promissory note that provides a secured commitment to repay such amounts to the Company according to an appropriate repayment schedule that includes interest that has accrued since the date the funds were taken from the Company until repaid; and
  - An order requiring that Michael Spicer be removed as director and officer of the Company and that an independent custodian be appointed.

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1 36

2 Ritmiller further seeks an award of reasonable attorney fees and costs based on  
3 the substantial benefits to be realized by the Company through this action.

4 37

5 Pursuant to ORS 31.725 *et seq.*, Ritmiller hereby gives notice that he may seek to  
6 amend this Complaint in the future and at the appropriate time to include a claim for punitive  
7 damages.

8 **SECOND CLAIM FOR RELIEF**  
9 **(Minority Shareholder Oppression—Direct Claim)**

10 38

11 Ritmiller realleges and incorporates by reference paragraphs 1 through 37 above.

12 39

13 As majority shareholder in the Company, a closely held S-corporation,  
14 Michael Spicer owes Ritmiller the fiduciary duties of loyalty, good faith, fair dealing, and full  
15 disclosure.

16 40

17 Beginning in 2008 at the latest, Michael Spicer made personal charges and  
18 payments on Company credit card and checking accounts as detailed above, including, but not  
19 limited to expenses for: vacations, entertainment, personal vehicles, cosmetic procedures,  
20 college tuition, fraternity fees, and personal clothing.

21 41

22 Beginning in 2008 at the latest, the Company has on multiple occasions made  
23 distributions to Michael Spicer as 51 percent shareholder that were not accompanied by  
24 distributions to Ritmiller as 49 percent shareholder—distributions that deprive Ritmiller full  
25 benefits of his 49 percent ownership share of the Company and that potentially jeopardize the  
26

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1 Company's S-corporation status and that violate the Bylaws (Article VII) and Oregon statute  
 2 (ORS 60.154).

3 42

4 Since 2007 at the latest, the Company has loaned Michael Spicer at least  
 5 \$260,096 for which no security was required, no promissory note was issued, and no applicable  
 6 rate of interest was contemporaneously set. Ritmiller, as holder of the majority of votes  
 7 excluding those of Michael Spicer, did not give approval to the loans, nor did the Company's  
 8 Board of Directors determine that the loans benefitted the Company and approve such loans, as  
 9 required by Oregon statute (ORS 60.364). To date, there is no record of Michael Spicer repaying  
 10 such loans.

11 43

12 The payment of personal expenses, the issuance of shareholder loans that were  
 13 not properly approved or documented, and the payment of distributions to one shareholder but  
 14 not the other variously violated the Company's Articles and Bylaws (*e.g.*, Bylaws Article VI, § 2;  
 15 Article VII; Article X), as well as the relevant statutory provisions (*e.g.*, ORS 60.357, 60.361,  
 16 60.364, 60.367, 60.374, 60.377).

17 44

18 As majority shareholder in control of the Company, Michael Spicer intentionally  
 19 misled, took unfair advantage of, and oppressed Ritmiller by:

- 20 • Making or approving the expenditure of Company funds for personal  
     purposes;
- 21 • Making or approving payments from the Company to himself  
     characterized as "51% Dist[ributions]" that were not accompanied by  
     49 percent distributions to Ritmiller;
- 22 • Unilaterally taking unapproved, unfair, and undocumented loans from the  
     Company;

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- 1           • Terminating the employment and directorship of Ritmiller without cause;
- 2           • Locking Ritmiller out of the business;
- 3           • Denying Ritmiller full disclosure of the Company's financials;
- 4           • Significantly decreasing the Company's shareholder distributions;
- 5           • Quadrupling his own salary; and
- 6           • Taking many of these actions while negotiating for the purchase of
- 7           Ritmiller's shares in the Company.

8                          45

9                          These actions, which violated Michael Spicer's fiduciary duties to Ritmiller, were  
10                         oppressive under ORS 60.661, ORS 60.952, and the Oregon common law.

11                         46

12                         Ritmiller has no adequate remedy at law to redress the full extent of the harm he  
13                         has sustained and continues to sustain as a result of Michael Spicer's oppressive conduct.  
14                         Accordingly, pursuant to ORS 60.952 seeks the following relief:

- 15           • An order requiring the Company to cease payment of personal expenses  
16                         for Michael Spicer and members of his family;
- 17           • The removal of Michael Spicer as director and officer of the Company;
- 18           • The appointment of an independent custodian to manage the business and  
19                         affairs of the Company (ORS 60.952(2)(f)) and/or the appointment of an  
20                         independent provisional director (ORS 60.952(2)(g));
- 21           • An accounting of the money taken out of the Company by Michael Spicer  
22                         and his family members, whether characterized as income, distributions,  
23                         personal expenses, shareholder loans, or otherwise (ORS 60.952(2)(3));
- 24           • An equalization of distributions with appropriate interest that has accrued  
25                         since each improper distribution (ORS 60.952(2)(i));

26

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- An order requiring that improper shareholder loans be documented with a payment schedule, appropriate interest, security, and promissory note;
  - An order requiring an appraisal of the undiscounted fair value of the shares in the Company;
  - An order requiring the purchase or redemption of Ritmiller's shares in the Company at their undiscounted fair value (ORS 60.952(2)(k));
  - Damages in an amount to be proven at trial, including prejudgment interest;
  - Reasonable attorney fees and costs based on the substantial benefits realized by the Company through this action; and
  - Appropriate injunctive relief and such other relief as may be just and equitable.

47

Pursuant to ORS 31.725 *et seq.*, Ritmiller hereby gives notice that he may seek to  
complaint in the future and at the appropriate time to include a claim for punitive

**THIRD CLAIM FOR RELIEF**  
**(Breach of Fiduciary Duty—Direct Claim)**

48

Ritmiller realleges and incorporates by reference paragraphs 1 through 47 above.

49

At all relevant times Michael Spicer has owed (and continues to owe) fiduciary duty, good faith, fair dealing, and full disclosure to Ritmiller as minority shareholder.

25 ///

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1 50

2 As alleged above, Michael Spicer has breached these fiduciary duties owed to  
3 Ritmiller by:

- 4 • Making or approving the expenditure of Company funds for personal  
5 purposes;
- 6 • Making or approving payments from the Company to himself  
7 characterized as "51% Dist[ributions]" that were not accompanied by  
8 49 percent distributions to Ritmiller;
- 9 • Unilaterally taking unapproved, unfair, and undocumented loans from the  
10 Company;
- 11 • Terminating the employment and directorship of Ritmiller without cause;
- 12 • Locking Ritmiller out of the business;
- 13 • Denying Ritmiller full disclosure of the Company's financials;
- 14 • Significantly decreasing the Company's shareholder distributions;
- 15 • Quadrupling his own salary; and
- 16 • Taking many of these actions while negotiating for the purchase of  
17 Ritmiller's shares in the Company.

18 51

19 As a result of Michael Spicer's breaches of his fiduciary duties owed to Ritmiller,  
20 Ritmiller was damaged in an amount to be proved at trial for which he is entitled to an award of  
21 damages, including damages in the amount of a 49 percent distribution calculated based on  
22 treatment of Michael Spicer's extra distributions, undocumented and unapproved loans, and  
23 personal expenses as 51 percent distributions to Michael Spicer.

24 52

25 Ritmiller has no adequate remedy at law to protect against Michael Spicer's abuse  
26 of his control over the Company, Michael Spicer's misappropriation of Company assets, or the

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1 harm caused by depriving Ritmiller of his right to participate in and benefit from his ownership  
2 in the Company. The court should order such relief as is necessary to redress these wrongs,  
3 including:

- The removal of Michael Spicer as director and officer of the Company;
  - The appointment of an independent custodian to manage the business and affairs of the Company and/or the appointment of an independent provisional director;
  - An accounting of the personal expenses, extra distributions, and undocumented and unapproved loans to Michael Spicer; and,
  - An equalization of distributions.

53

12 Pursuant ORS 31.725 *et seq.*, Ritmiller hereby gives notice that he may seek to  
13 amend this Complaint in the future and at the appropriate time to include a claim for punitive  
14 damages.

**FOURTH CLAIM FOR RELIEF  
(Breach of Contract—Direct Claim)**

54

Ritmiller realleges and incorporates by reference paragraphs 1 through 53 above.

55

20 Michael Spicer and Ritmiller agreed that each shareholder would receive equal  
21 benefits from the Company consistent with their respective ownership and that any personal  
22 spending of Company funds would be limited in amount and equal. The agreement is a valid  
23 contract that is binding on Michael Spicer and contains an implied covenant of good faith and  
24 fair dealing.

25      ///

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1

56

2 As alleged above, Michael Spicer breached his implied covenant of good faith  
 3 and fair dealing by:

- 4 • Causing the Company to pay substantial and significantly disproportionate  
   5 personal expenses that benefit only Michael Spicer and/or his family;
- 6 • Causing the Company to pay himself distributions that were not  
   7 accompanied by 49 percent distributions to Ritmiller;
- 8 • Unilaterally taking unapproved, unfair, and undocumented loans from the  
   9 Company without any protections or assurance of repayment;
- 10 • Terminating Ritmiller's employment and health insurance;
- 11 • Significantly decreasing the amount of shareholder distributions;
- 12 • Quadrupling his own salary; and
- 13 • Taking many of these actions while negotiating for the purchase of  
   14 Ritmiller's shares in the Company.

15

57

16 As a result of Michael Spicer's breach of contract, Ritmiller was damaged in an  
 17 amount to be proved at trial for which he is entitled to an award of damages, including damages  
 18 in the amount of a 49 percent distribution calculated based on treatment of Michael Spicer's extra  
 19 distributions, undocumented and unapproved loans, and personal expenses as 51 percent  
 20 distributions to Michael Spicer.

21

**FIFTH CLAIM FOR RELIEF**  
**(Fraud—Direct Claim)**

22

23

58

24 Ritmiller realleges and incorporates by reference paragraphs 1 through 57 above.

25   ///

26   ///

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1

59

2 As alleged above, Michael Spicer made the following representations to Ritmiller  
 3 when they formed the Company and at various times during their relationship as partners and  
 4 shareholders from 1998 through 2012, including conversations that occurred at the Company's  
 5 offices, while working on service calls or installations, and during rounds of golf:

- 6 • That each shareholder was receiving and would receive equal benefits  
     7 from the Company consistent with their respective ownership;
- 8 • That any personal spending of Company funds would be limited in  
     9 amount and equal.
- 10 • That neither Michael Spicer nor his family were using or would use  
     11 Company funds for their personal benefit in amounts that were  
     12 significantly disproportionate to amounts spent by Ritmiller;
- 13 • That each time Michael Spicer took a distribution Ritmiller was receiving  
     14 and would receive a corresponding distribution; and
- 15 • That Michael Spicer and his family were managing and would manage  
     16 the Company's finances and bookkeeping in a manner that ensured such  
     17 equal treatment.

18

60

19 Michael Spicer intended for Ritmiller to rely on these representations and either  
 20 knew they were false when made or made them with reckless disregard of the truth. Ritmiller  
 21 justifiably relied on Michael Spicer's representations and entrusted Michael Spicer and other  
 22 members of Michael Spicer's family with the bookkeeping and financial affairs of the Company.

23

61

24 Michael Spicer intentionally concealed and failed to disclose to Ritmiller material  
 25 facts, including the following:  
 26

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 241240-0001

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- 1           • Michael Spicer and his family were using substantial and significantly  
 2           disproportionate amounts of Company funds for personal purposes as  
 3           detailed above;
- 4           • Michael Spicer was taking distributions without corresponding  
 5           distributions to Ritmiller;
- 6           • Michael Spicer was taking loans without any commitment for repayment,  
 7           security, or adequate interest; and
- 8           • Ritmiller was not receiving equal benefits consistent with his ownership in  
 9           the Company.

10                 62

11                 The full extent and nature of the concealed abuses remains unknown due to the  
 12                 Company's inconsistent and incomplete accounting, in addition to the lack of complete  
 13                 documentation and information from the Company.

14                 63

15                 As a result of Michael Spicer's promises, representations, and fiduciary duties, he  
 16                 had a duty to disclose the material facts alleged above to Ritmiller.

17                 64

18                 Michael Spicer intended that Ritmiller would rely to his detriment on these  
 19                 representations and omissions. Ritmiller did, in fact, rely on Michael Spicer's representations  
 20                 and omissions.

21                 65

22                 As a result of Michael Spicer's fraudulent representations and omissions, Ritmiller  
 23                 was damaged in an amount to be proved at trial for which he is entitled to an award of damages,  
 24                 including damages in the amount of a 49 percent distribution calculated based on treatment of  
 25                 Michael Spicer's extra distributions, undocumented and unapproved loans, and personal  
 26                 expenses as 51 percent distributions to Michael Spicer.

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1 66

2 Pursuant to ORS 31.725 *et seq.*, Ritmiller hereby gives notice that he may seek to  
 3 amend this Complaint in the future and at the appropriate time to include a claim for punitive  
 4 damages.

5 **SIXTH CLAIM FOR RELIEF**  
 6 **(Conversion—Derivative Claim)**

7 67

8 Ritmiller realleges and incorporates by reference paragraphs 1 through 66 above.

9 68

10 As alleged above, Michael Spicer has misappropriated Company funds through  
 11 the use of Company credit cards, access to Company bank accounts, unilateral “loans” with no  
 12 promise of repayment, and improper distributions.

13 69

14 The Company was and is the rightful owner of these funds.

15 70

16 The Company has sustained damage in an amount to be proven at trial as a result  
 17 of Michael Spicer’s conversion of Company funds, including the total amount of funds  
 18 improperly taken and interest that has accrued since each such conversion.

19 71

20 Ritmiller further seeks an award of reasonable attorney fees and costs based on  
 21 the substantial benefits to be realized by the Company through this action.

22 **SEVENTH CLAIM FOR RELIEF**  
 23 **(Unjust Enrichment—Derivative Claim)**

24 72

25 Ritmiller realleges and incorporates by reference paragraphs 1 through 71 above.  
 26

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1 73

2 Michael Spicer abused his control over the Company by causing it to improperly  
 3 divert substantial Company funds to pay personal expenses, a \$120,000 salary, improper  
 4 distributions, and “loans” that lacked security, interest, and any commitment of repayment. The  
 5 substantial amount of Company funds that were diverted to Michael Spicer constitute a benefit  
 6 that has been conferred by the Company.

7 74

8 It would be unjust to allow defendant Michael Spicer to retain such benefits  
 9 without requiring repayment with interest.

10 75

11 As a result of Michael Spicer’s unjust enrichment, the Company has been  
 12 damaged in an amount that will be proven at trial. The Company has no adequate remedy at law  
 13 to prevent defendant Michael Spicer from improperly causing the Company to continue to make  
 14 personal charges and payments of the kind detailed above, and by failing to recover amounts  
 15 loaned to shareholders. The court should order such equitable relief as is necessary to prohibit  
 16 such personal charges and payments to protect the Company.

17 76

18 Ritmiller further seeks an award of reasonable attorney fees and costs based on  
 19 the substantial benefits to be realized by the Company through this action.

20 **EIGHTH CLAIM FOR RELIEF**  
 21 **(Accounting)**

22 77

23 Ritmiller realleges and incorporates by reference paragraphs 1 through 76 above.

24 78

25 During all relevant times, Michael Spicer has exercised control over the  
 26 Company's financial and accounting records.

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1

79

2 As alleged above, the records received have been incomplete and inconsistent,  
 3 creating serious questions concerning the full amount Company funds that have been  
 4 misappropriated and how the Company treated personal expenses, loans, and distributions. For  
 5 instance, it remains unclear what personal expenses have been treated as shareholder loans or  
 6 distributions and whether and how unequal distributions were properly converted into loans.

7

80

8 On behalf of the Company and himself, Ritmiller seeks an order requiring an  
 9 accounting, including the preparation of audited financial statements and a complete accounting  
 10 of all Company funds that have been diverted to Michael Spicer or others for personal benefit  
 11 though credit card payments, distributions, loans, or otherwise. Such an accounting is necessary  
 12 to ensure that the Company's interests and assets are protected and that it maintains its S-  
 13 Corporation status.

14

#### **PRAAYER FOR RELIEF**

15 WHEREFORE, Ritmiller prays for the following relief:

- 16 1. An award of damages in favor of the Company in an amount to be proven  
     at trial, plus applicable pre-and post-judgment interest as allowed by law on amounts ascertained  
     or easily ascertainable from Company records;
- 19 2. The removal of Michael Spicer as director and officer of the Company;
- 20 3. The appointment of an independent custodian to manage the business and  
     affairs of the Company and/or the appointment of an independent provisional director;
- 22 4. An order prohibiting the use of Company funds for personal purposes;
- 23 5. An accounting;
- 24 6. An order requiring that all outstanding shareholder loans be documented  
     with a payment schedule, appropriate interest, security, and promissory note;

26

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7. An award of damages in favor of Ritmiller in an amount to be proven at trial, plus applicable pre-and post-judgment interest as allowed by law on amounts ascertained or easily ascertainable from Company records;

8. An order requiring the equalization of distributions with accrued interest;

9. To the extent not inconsistent with other relief awarded to the Company or  
order requiring Michael Spicer to pay Ritmiller 49% of the amount of Company  
misappropriated, plus interest;

10. Pursuant to ORS 60.952(2), an order requiring an appraisal of the fair value of Ritmiller's shares and the purchase or redemption of Ritmiller's undiscouned fair value;

11. An award of reasonable attorney fees and costs based on the substantial benefits realized by the Company through this action; and

12. Appropriate injunctive relief and such other relief as may be just and

DATED this 5th day of December, 2014.

MILLER NASH LLP

s/ Justin C. Sawyer

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Attorneys for Plaintiff Randy Ritmiller,  
Individually and as a Shareholder of Spirit  
Enterprises, Inc.

1 CERTIFICATE OF SERVICE  
2

3 I hereby certify that I served the foregoing First Amended Complaint on the  
4 attorney or party listed below on the date set forth below by the method(s) indicated:

5 Ryan M. Bledsoe  
6 Tonkon Torp LLP  
7 1600 Pioneer Tower  
8 888 SW Fifth Avenue  
9 Portland, Oregon 97204

- First-class mail, postage prepaid  
 Facsimile, pursuant to ORCP 9 F  
 Hand-delivery  
 Overnight courier, delivery prepaid  
 E-mail, pursuant to ORCP 9 G  
 E-mail copy, as a courtesy only  
 Other: \_\_\_\_\_

10 *Attorneys for Individual Defendants*

11 Joshua P. Stump  
12 Harrang Long Gary Rudnick PC  
13 1001 S.W. Fifth Avenue, 16th Floor  
14 Portland, Oregon 97204

- First-class mail, postage prepaid  
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 Hand-delivery  
 Overnight courier, delivery prepaid  
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 E-mail copy, as a courtesy only  
 Other: \_\_\_\_\_

15 *Attorneys for Defendant Spirit Enterprises of  
16 Oregon, Inc.*

17 **Electronic Service, via OJD eFiling (using Odyssey File & Serve), pursuant to**

18 **UTCR 21.100:**

19 Ryan M. Bledsoe  
20 *Attorney(s) for Individual Defendants*

21 Joshua Stump  
22 *Attorney(s) for Defendant Spirit Enterprises of Oregon, Inc.*

23 DATED this 5th day of December, 2014.

24 s/ Justin C. Sawyer  
25 Justin C. Sawyer, OSB No. 014057  
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27 Attorneys for Plaintiff Randy Ritmiller,  
28 Individually and as a Shareholder of Spirit  
29 Enterprises, Inc.